

WATER RIGHT CHANGES INFORMATION AND INSTRUCTIONS



WHEN MUST AN APPLICATION TO CHANGE BE FILED?

An application to change a water right form 606 must be filed if a water right owner wants to make a change in the point of diversion, the place of use, the purpose of use or the place of storage.

An authorization to change the water right must be granted **prior** to making the change. If the change has already been made and an authorization to change has not been granted, it is an unlawful change. An application must be filed and the authorization granted for the changed use of water to legally continue.

The Department's primary role in the water right change process is to assure the proposed change will not adversely affect existing water rights.

WHAT HAPPENS ONCE YOU FILE AN APPLICATION?

Once your application is received it is reviewed by the Department to determine whether it conforms to the legal standard of being correct and complete. This means, *"the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information."* If the Department judges your application correct and complete it does not mean that the authorization to change will be issued. Rather, it insures that the application contains *substantial credible information, which*, as defined by statute, means *"probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information."* Simply stated, a correct and complete application contains information sufficient for the Department to understand, evaluate and render a decision on your application.

The water rights being changed are subject to a critical and intense review. All elements of the water rights will be reviewed including, but not limited to the historic flow rate, volume, purpose of use and number of acres irrigated (when applicable). The review is used to substantiate the validity and the reasonableness of the historic beneficial use. It is important to remember that this change is limited to the amount of the historical use recognized by the Department. That amount is what is available to change and will thereafter not exceed that amount.

If further information is needed to make your application correct and complete you will be notified in writing of your application's deficiencies. The correspondence will limit the time you have to respond with additional information to make your application correct and complete. If sufficient credible information is not submitted to make your application correct and complete within the identified time frame, your application will be terminated.

If your application is deemed correct and complete, in most cases it must be published to provide notice to the public. In limited circumstances the Department may waive the public notice

requirement and take final action on the application. At this time the Department makes a preliminary assessment of your application as it relates to the criteria in MCA 85-2-402(2). If your application is noticed to the public and *no objections are received* the Department will document its findings, develop final recommendations and take final action on your application. If *objections are received* Department staff, at the discretion of the Regional Manager, may work with you and the objectors to resolve the concerns. You are encouraged to work with objectors directly to resolve your differences, however, the Department, by law, is limited to the types of conditions it may add to a Change Authorization. If the objectors withdraw their objections, the Department may amend its initial assessment of your application to reflect any new insights and information gained through the objection process. The Department will then prepare its findings, develop final recommendations, and take action on your application. This action may include approval of the application as submitted, approval with conditions deemed necessary by the Department, or denial of the application. Note that the application may be approved with conditions or denied even if there are no objections or if all objections are withdrawn. If the application is conditionally approved or is denied, you will have opportunity to show cause in an administrative hearing why the authorization to change should not be conditioned or denied.

If objections cannot be resolved, a contested case hearing may be necessary. This is an administrative hearing where a hearings examiner will listen to the information presented by all parties. The examiner will make findings based on the information presented and will propose a decision. Parties will have the opportunity to provide comments to the proposal. Ultimately the Department will make a final decision. The final order can be appealed to District Court.

WHEN CAN YOU EXPECT A DECISION?

You should file your application at least one year in advance of the time you intend to make your change, as the application process can be quite lengthy. The Department strives to address your application as soon as possible. However, limited resources sometimes cause delays in reviewing your application. It is important that your application be clear and detailed to avoid further delays once the review of your application begins.

PREPARING THE APPLICATION TO CHANGE A WATER RIGHT (Form 606)

This is your application. The Department's role is to evaluate the application, not to develop the application for you. The Department has information regarding your water rights and the water rights of others and will assist you in locating this information. However, you are responsible to develop your application. **The Department will not collect or analyze information and data for you or fill out your application.**

A water right change application will be deemed correct and complete if an applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1801, 36.12.1802, 36.12.1901 through 36.12.1904, and 36.12.2001, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including a criteria addendum, have been filled in with the required information.